

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

The State of Texas, et al.,

Plaintiffs,

v.

Google LLC,

Defendant.

Case No. 4:20-cv-00957-SDJ

Hon. Sean D. Jordan

**PLAINTIFF STATES' NOTICE REGARDING GOOGLE'S SUPPLEMENTAL BRIEF
ON ITS MOTION TO STRIKE PLAINTIFF STATES' JURY DEMAND**

After full briefing and hearing on Google's motion to strike Plaintiff States' jury demand, the Court ordered supplemental briefing on "the parties' precise arguments concerning the availability of jury trial for the States' DTPA and antitrust claims. Specifically, the Court requires detailed and comprehensive analyses from both sides on each State's antitrust and DTPA statutes, including analyses of the precise portions of each statute that are at issue in this case as to both liability and remedy." Dkt. 825. Plaintiff States submitted a supplemental brief that presents the arguments the Court requested. Dkt. 834. Google did not. It first helped itself to a different "supplemental brief regarding *Standard Oil Co. v. Arizona*," Dkt. 832, which, as Plaintiff States noted, "does not warrant a response," Dkt. 833 (offering to supply a response if the Court concludes one would be helpful). Now, Google has submitted a supplemental brief that covers issues on which the Court did not invite briefing and to which Plaintiff States have no opportunity to respond. In particular:

In Section III(B)(2)(b)(iii)(a) as to Arkansas's state antitrust claim, *see* Dkt. 835 at 79–81, and in Section III(B)(2)(b)(iii)(b) as to Idaho's state antitrust claim, *see id.* at 81–83, Google argues that “Arkansas and Idaho Cannot Recover Civil Penalties or Injunctive Relief,” *see id.* at 79–83, whether tried to a jury or to the Court. Setting aside its lack of merit, these arguments are for a dispositive motion. Google should not be allowed to brief new summary judgment issues after the summary judgment deadline, beyond the summary judgment page limitations, and in a context in which Plaintiff States cannot respond. *Cf.* Dkt. 217.

In Sections II(C)(1)(c), III(A)(2)(d), and III(B)(2)(b)(ii)(c), *see id.* at 14–15, 59–61, 78–79, Google argues for the first time that the Court lacks jurisdiction over Puerto Rico's claims because they must be brought in Puerto Rico's administrative tribunal. Here, the only proper question is whether the claims should be tried to this Court or to a jury. Shoe-horning in merits or jurisdictional arguments that apply to the *Court* trying the claims is improper.¹

Plaintiff States do not wish to respond to unnecessary briefing with a request for more unnecessary briefing. But neither do Plaintiff States wish for meritless arguments to appear stronger by standing unrebutted. To balance those considerations, Plaintiff States ask that if the Court considers Google's arguments on either of the two merits issues above, it give Plaintiff States an opportunity to respond before issuing a ruling.

¹ Apart from those issues, Google took advantage of the generous page limitations to relitigate its argument that no state-by-state analysis of the penalties calculation is appropriate because the Court must decide the amount of civil penalties regardless of what state law says. *See* §§ II(A) and (B), Dkt. 835 at 5–9. And in Section III(A)(1), *see* Dkt. 835 at 20–32, Google devotes a dozen pages to similarly relitigate an issue on which it already had the last word: whether, for Seventh Amendment purposes, the Plaintiff States' DTPA claims are more analogous to common-law actions than to actions in equity. *See* Dkt. 690 at 3–4 (motion, making this argument); Dkt. 753 at 4–5 (response); Dkt. 767 at 1 (reply). Plaintiff States understood the Court to be requesting *state-by-state* briefing, not further argument on federal law.

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CERTIFICATE OF SERVICE

I certify that on April 9, 2025, this document was filed electronically in compliance with Local Rule CV-5(a) and served on all counsel who have consented to electronic service, per Local Rule CV-5(a)(3)(A).

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